

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**DANA HEYEN**

Claimant

VS.

**CITY OF WICHITA**

Self-Insured Respondent

Docket No. 1,064,079

**ORDER**

**STATEMENT OF THE CASE**

Respondent requested review of the April 5, 2013, preliminary hearing Order entered by Administrative Law Judge (ALJ) Thomas Klein. Joni J. Franklin, of Wichita, Kansas, appeared for claimant. Edward D. Heath, Jr., of Wichita, Kansas, appeared for the self-insured respondent.

The ALJ found that claimant sustained a work-related physical injury on June 7, 2012, and that her posttraumatic stress disorder (PTSD) is causally connected to the physical injury. Accordingly, the ALJ ordered respondent to pay for claimant's past psychological treatment, prescriptions and medical mileage. Further, the ALJ authorized Susan B. Baade, LSCSW BCD, to treat claimant's psychological injuries.

The record on appeal is the same as that considered by the ALJ and consists of the transcript of the April 2, 2013, Preliminary Hearing and the exhibits, together with the pleadings contained in the administrative file.

**ISSUES**

Respondent argues the evidence does not support a finding that claimant's psychological condition is directly traceable to claimant's physical injury. Respondent asks that the Board reverse the ALJ's Order.

Claimant asserts that her psychological injuries are compensable, as they are a natural consequence of her work-related injury of June 7, 2012.

The issue for the Board's review is: Are claimant's psychological injuries compensable?

**FINDINGS OF FACT**

Claimant is a police officer with respondent. On June 7, 2012, claimant was pursuing a vehicle when the vehicle's passenger began firing at claimant's police cruiser. Claimant was about 10 feet away and saw the gun being pointed at her. The assailant fired three bullets. The second bullet hit the police cruiser's passenger side door and shattered the passenger window. Claimant thought she had been shot but actually only suffered cuts to her right arm and hand. Claimant was treated at the scene by EMTs from the Sedgwick County EMS.

On June 11, 2012, respondent sent claimant to EMPAC, a counseling service respondent sends officers to who have been involved in traumatic incidents in the line of duty. She was seen by counselor Adam Gragg, who found her fit to return to work. Claimant returned to patrol work but started having night terrors and was unable to sleep. She returned to EMPAC on August 10, 2012. After listening to claimant describe her sleep problems and other issues, Mr. Gragg referred claimant to Ms. Baade. EMPAC also notified claimant's captain that claimant had returned to EMPAC, at which time she was reassigned to the Exploited and Missing Children Unit, which is a desk job.

Ms. Baade diagnosed claimant with PTSD that was directly related to the June 7, 2012, incident, when claimant was being shot at. Ms. Baade identified triggers for claimant's condition as being patrol cars, uniforms and guns. Claimant continues to think about being shot. Claimant has continued her treatment with Ms. Baade even though respondent denied her request for psychological treatment. Along with therapy to lessen claimant's anxiety and PTSD symptoms, claimant is on medication for depression and anxiety.

**PRINCIPLES OF LAW**

K.S.A. 2011 Supp. 44-501b states in part:

(b) If in any employment to which the workers compensation act applies, an employee suffers personal injury by accident, repetitive trauma or occupational disease arising out of and in the course of employment, the employer shall be liable to pay compensation to the employee in accordance with and subject to the provisions of the workers compensation act.

(c) The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

In *Love*,<sup>1</sup> the Kansas Court of Appeals stated:

In order to establish a compensable claim for traumatic neurosis under the Kansas Workers' Compensation Act, K.S.A. 44-501 *et seq.*, the claimant must establish: (a) a work-related physical injury; (b) symptoms of the traumatic neurosis; and (c) that the neurosis is directly traceable to the physical injury.

K.S.A. 2011 Supp. 44-508(d) states:

(d) "Accident" means an undesigned, sudden and unexpected traumatic event, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. An accident shall be identifiable by time and place of occurrence, produce at the time symptoms of an injury, and occur during a single work shift. The accident must be the prevailing factor in causing the injury. "Accident" shall in no case be construed to include repetitive trauma in any form.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>2</sup> Moreover, this review of a preliminary hearing order has been determined by only one Board Member, as permitted by K.S.A. 2011 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board as it is when the appeal is from a final order.<sup>3</sup>

### ANALYSIS

The evidence presented at the preliminary hearing provides no guidance regarding what aspect of the June 7, 2012, incident gives rise to claimant's need for counseling. Nor does the record contain an opinion that the recommended psychological treatment is directly traceable to any specific aspect of the gun shot incident. Ms. Baade, a licensed social worker, provided a report to claimant's attorney that the treatment claimant is requesting "is needed due to the incident June 7, 2012 as outlined in your letter of February 27."<sup>4</sup>

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<sup>1</sup> *Love v. McDonald's Restaurant*, 13 Kan. App. 2d 397, Syl., 771 P.2d 557, *rev. denied* 245 Kan. 784 (1989).

<sup>2</sup> K.S.A. 44-534a; see *Quandt v. IBP*, 38 Kan. App. 2d 874, 173 P.3d 1149, *rev. denied* 286 Kan. 1179 (2008); *Butera v. Fluor Daniel Constr. Corp.*, 28 Kan. App. 2d 542, 18 P.3d 278, *rev. denied* 271 Kan. 1035 (2001).

<sup>3</sup> K.S.A. 2011 Supp. 44-555c(k).

<sup>4</sup> P.H. Cl. Ex. 4 at 2.

There are several problems with this opinion. First, a copy of the letter sent to Ms. Baade by claimant's attorney was not admitted as a part of the record. The result is that it cannot be determined, without pure speculation, what the incident includes. The incident could be limited to claimant being shot at or being involved in a shootout. Second, Ms. Baade did not provide an opinion that the PTSD is directly traceable to any physical injury. Third, Ms. Baade did not provide an opinion that the accident was the prevailing factor causing the PTSD.

K.S.A. 2011 Supp. 44-510h(a) states that "[i]t shall be the duty of the employer to provide the services of a health care provider . . . ." K.S.A. 2011 Supp. 44-508(j) states:

"Health care provider" means any person licensed, by the proper licensing authority of this state, another state or the District of Columbia, to practice medicine and surgery, osteopathy, chiropractic, dentistry, optometry, podiatry, audiology or psychology.

It should also be noted that Ms. Baade is a licensed social worker, not a psychologist. Her profession does not come within the definition of health care provider. As such, there are questions, which will not be addressed in this order, regarding whether an ALJ can rely on the opinions of a social worker who is not under the direction of a health care provider as defined by the act.

#### **CONCLUSION**

For the reasons stated above, the undersigned finds that claimant has failed to prove that her PTSD is directly traceable to a compensable physical injury.

#### **ORDER**

**WHEREFORE**, it is the finding, decision and order of this Board Member that the Order of Administrative Law Judge Thomas Klein dated April 5, 2013, is reversed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of May, 2013.

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HONORABLE SETH G. VALERIUS  
BOARD MEMBER

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Thomas Klein, Administrative Law Judge